

# SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and Sunstate Equipment Co., LLC (hereinafter "SUNSTATE"), 5552 E. Washington Street, Phoenix, Arizona 85034.

## I. RECITALS

- (1) California Health and Safety Code 39650-39675 (HSC §§ 39650-39675) mandate the reduction of the emission of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive 10-year scientific assessment process, ARB identified particulate matter from diesel-fueled engines as a toxic air contaminant. In-use off-road heavy duty diesel vehicles (off-road vehicles) are powered by diesel fueled engines that emit toxic particulate matter. Off-road vehicles are controlled under chapter 9, 13 CCR § 2449.
- (2) 13 CCR § 2449(b) states that, except as provided in § 2449(b)(2)(G), the Regulation for In-Use Off-Road Diesel-Fueled Fleets (Off-Road Regulation) "applies to any person, business, or government agency who owns or operates within California any vehicles with a diesel-fueled or alternative diesel fueled off-road compression-ignition engine with maximum power (max hp) of 25 horsepower (hp) or greater provided that the vehicle cannot be registered and driven safely on-road or was not designed to be driven on-road, even if it has been modified so that it can be driven safely on-road."
- (3) 13 CCR § 2449(f) sets forth the requirements for labeling all vehicles with engines subject to the Off-Road Regulation with an ARB-issued equipment identification number (EIN).
- (4) 13 CCR § 2449(g) sets forth the requirements for reporting all vehicles with engines subject to the Off-Road Regulation.
- (5) 13 CCR § 2449(g)(4) states that "any person selling a vehicle with an engine subject to this regulation in California must notify ARB within 30 days from the date the vehicle was sold. If the reporting date under section 2449(g)(2) occurs within 30 days of the vehicle being sold, the annual reporting may serve as the notification to ARB that the vehicle was sold."
- (6) 13 CCR § 2449.1 sets forth the performance requirements for all fleets with vehicles powered by engines subject to the Off-Road Regulation. Each fleet or fleet portion is required to meet the applicable fleet average requirements or demonstrate that it met the applicable Best Available Control Technology (BACT) requirements as described in section 2449.1(b) before January 1 of each year, based upon the fleet size.

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- (7) 13 CCR § 2449.1(b) sets forth the BACT requirements for fleets with vehicles powered by engines subject to the Off-Road Regulation.
- (8) ARB Enforcement Division, has documented that SUNSTATE failed to report and label its off-road vehicles prior to the August 1, 2009 deadline, and failed to notify ARB within 30 days of selling its off-road vehicles.
- (9) Failure to report and label off-road vehicles, failure to notify ARB within 30 days of selling off-road vehicles for off-road vehicles are violations of state law resulting in penalties. HSC § 39674 authorizes civil or administrative penalties not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000) for each day that the violation occurs.
- (10) SUNSTATE has two outstanding citations, as noted in the table below:

Citation Number	Violation Type	Issue Date
ORE100313001DLBAAQ	ORE	October 3, 2013
ORE101113001DLBAAQ	ORE	October 11, 2013

- (11) In order to resolve these alleged violations, SUNSTATE has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.
- (12) In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and SUNSTATE agree as follows:

## II. TERMS AND RELEASE

In consideration of ARB not filing a legal action against SUNSTATE for the alleged violations referred to above, and SUNSTATE's payment of the penalties set forth in Section 1 below, ARB and SUNSTATE agree as follows:

- (1) Upon execution of this Agreement, the sum of thirty thousand dollars (\$30,000.00) shall be paid on behalf of SUNSTATE no later than December 1, 2016, as follows:
  - \$22,500.00 payable to the **Air Pollution Control Fund**
  - \$7,500.00 payable to the **Peralta Colleges Foundation**



**Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:**

**Mr. Nelson Van  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
P.O. Box 2815  
Sacramento, California 95812**

**Please send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:**

**California Air Resources Board  
Accounting Office  
P.O. Box 1436  
Sacramento, California 95812-1436**

- (2) If the Attorney General files a civil action to enforce this settlement agreement, SUNSTATE shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.
- (3) It is further agreed that the penalties described in "Terms and Release", paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish SUNSTATE for violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on SUNSTATE by ARB arising from the facts described in recital paragraphs (1) through (10) are non-dischargeable under 11 United States Code § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
- (4) SUNSTATE shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (5) SUNSTATE shall remain in compliance with the ECL regulation as codified in 13 CCR § 2183.
- (6) SUNSTATE shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in 13 CCR § 2485, within 45 days of this Agreement.

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- (7) SUNSTATE has two outstanding citations (citation numbers ORE100313001DLBAAQ and ORE101113001DLBAAQ, dated October 3, 2013 and October 11, 2013), for not meeting the requirements of the Off-Road program. These citations will be cleared through this Agreement.
- (8) SUNSTATE shall remain in compliance with the Truck and Bus regulation as codified in 13 CCR § 2025.
- (9) SUNSTATE shall submit proof of compliance with the Truck and Bus regulation (as codified in 13 CCR § 2025), within 45 days of the execution of this Agreement, to **Mr. Nelson Van, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**
- (10) SUNSTATE shall comply with the requirements for off-road vehicles set forth in 13 CCR § 2449.
- (11) Within 45 days of the execution of this Agreement, SUNSTATE shall bring all vehicles subject to the Off-Road Regulation into compliance, and shall submit proof of those actions to: to **Mr. Nelson Van, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**
- (12) This Agreement shall apply to and be binding upon SUNSTATE, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (13) This Agreement constitutes the entire agreement and understanding between ARB and SUNSTATE concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and SUNSTATE concerning the subject matter hereof.
- (14) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (15) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (16) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.



- (17) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.
- (18) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (HSC § 39619.7). This information, which is provided throughout this settlement agreement, is summarized here:

**The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.**

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in HSC §§ 42403 and 43024.

Off-Road Vehicle Violations

The per vehicle penalty for the off-road vehicle violations involved in this case is a maximum of \$1,000 per vehicle per day for strict liability violations or \$10,000 per vehicle per day for negligent or intentional violations. The penalty obtained for reporting violations in this case is \$30,000.00 or approximately 268.00 per vehicle for 112 vehicles.

**The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

Off-Road Vehicle Violations

The penalty provision being applied for the Off-Road Regulation (13 CCR § 2449) violations (including labeling) is HSC § 39674 because the Off-Road Regulation is an Airborne Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because SUNSTATE failed to report changes in its off-road fleet.

**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

Off-Road Vehicle Violations

The provisions cited above for reporting violations do not prohibit emissions above a specified level of g/hp-hr.

- (19) SUNSTATE acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC § 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
- (20) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
- (21) The penalty was based on confidential settlement communications between ARB and SUNSTATE that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and SUNSTATE and reflects ARB's assessment of the relative strength of its case against SUNSTATE, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that SUNSTATE may have secured from its actions.
- (22) Now therefore, in consideration of the payment on behalf of SUNSTATE to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases SUNSTATE and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraphs (1) through (10) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

Signature: 

Print Name: Dr. Todd P. Sax

Title: Chief, Enforcement Division

Date: 12/18/16

**SUNSTATE EQUIPMENT CO., LLC**

Signature: 

Print Name: Barth E. Price

Title: Executive Vice President, CFO

Date: 11/28/2016